most contrary to equitable principles to allow it to continue to hold the property discharged from the trusts. O. K. M.

Corporations—Dissolution—Directors as Trustees.—A stockholder may set aside a judgment against a corporation which has been dissolved for failure to pay its license tax under the State law.[1] Although this is clear and well established as a rule of law, does not the situation suggest a practical difficulty under the statute? Under the law as it now stands,[2] the directors of a corporation at the time of its dissolution become trustees of its assets. The person who has a claim against such a corporation, may encounter several difficulties. He may find that it is impossible to ascertain the persons who were directors at the time of the dissolution, because there is no public record provided under the law which shows the names of persons who were charged as trustees by the dissolution. The records of the corporation may be lost or destroyed, or, again, the officers may be hard to locate. Would it not better serve the interests of all, and, in particular, creditors, to have incorporated in the law, instead of the present provision providing an absolute dissolution for failure to pay the license tax, one forfeiting the right of the corporation to do business, but preserving its existence for two years at least, for the sole purpose of suing and being sued. Many States have such provisions covering the dissolution of corporations.[3] Substituted service by publication or otherwise may be allowed in such cases.[4] It would also facilitate matters to require that the names of all directors should be recorded in the county where the corporation carries on its business.

The code provides that the directors at the time of the dissolution become trustees. Do they become trustees in the sense that they wind up the affairs of the corporation under the supervision of a court of equity? It is clear their trusteeship exists by virtue of the statute, from which they derive their powers rather than from the court.[5] They are, however, amenable to equity upon the application of a party in interest,—a creditor or a stockholder.[6] If the corporation was insolvent, they would clearly be bound to administer the assets for the benefit of all the creditors.[7] If the corporation is apparently solvent, can the director-trustees pay off the claims in the order presented, or prefer creditors in the order in which they present themselves? It is

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[1] Newhall v. Western Zinc Mining Co. (Dec. 20, 1912), 44 Cal. 718.
[2] Cal. Civil Code, Sec. 400.
[3] Crossman v. Vivienda Water Co. (1907), 150 Cal. 575, 89 Pac. 335; Thompson on Corporations, Secs. 6575 and 6576, 10 Cyc. 1314.
[4] Merrill v. Montgomery (1872), 25 Mich. 73; Richmond Ry. Co. v. New York Ry. Co. (1897), 95 Va. 386, 28 S. E. 573; Thompson on Corporations, Sec. 6583.
[5] Havemeyer v. Superior Court (1890), 84 Cal. 327, 366, 24 Pac. 121.
[6] See 5 supra.
[7] Argues v. Union Savings Bank of San Jose (1901), 133 Cal. 139, 65 Pac. 307.

suggested in a federal case [8] that the directors as trustees have no such right and that they must act as ordinary trustees of creditors and therefore prefer creditors or pay claims in full at their peril. The case also suggests, notwithstanding they act under the statute, that the assistance of equity is always open to their protection. It would seem that a suit in equity by the director-trustees would be the safest and most satisfactory method of winding up the affairs of the company.

Under the code,[9] a receiver cannot be appointed to take the place of such director-trustees on the complaint of creditors or stockholders except on showing a failure on their part to perform their duties.[10] The court cannot, on its own motion, or on the application of a stranger, appoint such receiver.[11] M. C. L.

Corporations—Purchase by Corporation of Shares of Its Own Stock —Withdrawal of Capital Stock.—It is generally stated that in California under Section 309 of the Civil Code, a corporation is not authorized to purchase shares of its own stock. Such a purchase would amount to a payment to the stockholder of part of the capital stock. In a recent case [1] the Supreme Court of this State was called upon to construe a contract which, it was claimed, fell under this provision. The contract provided that, "should the purchaser of said stock certificate . . . wish to sell the same, we will re-purchase it at par value . . . on ninety days' notice." The stockholder offered his stock to the corporation after giving the required notice, but the corporation refused to repurchase according to the terms of the contract. The court held that the corporation was liable on the promise to re-purchase, and that such a transaction would not amount to a purhase by the corporation of its own stock in violation of the code section.[2]

The court cites an earlier case decided by the District Court of Appeal,[3] in support of the view. In that case, however, the return of the money paid was conditioned upon the satisfaction of the party paying, after an examination of the property of the corporation. The condition, therefore, clearly related to the nature of the property. In its decision, the court did not discuss the code section. The Supreme Court has held that a by-law assuming to give to any stockholder the

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[8] American Ice Co. v. Pocono Spring Water Co. (1908), 165 Fed. 714 see also Thompson on Corporations, Secs. 6604, 6605, 6611.

[9] Cal. Civil Code, Secs. 564, 565.

[10] See 7 supra.

[11] State Investment & Ins. Co. v. Superior Ct (1894), 101 Cal. 135, 147, 35 Pac. 549.

[1] Schulte v. Boulevard Gardens Land Co. (Jan. 9, 1913), 45 Cal. Dec. 65.

[2] Cal. Civil Code, Sec. 309.

[3] Dickinson v. Zubiate Mining Co. (1909), 11 Cal. App. 656, 106 Pac. 123.